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32
33 IN THE UNITED STATES DISTRICT COURT
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35 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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37 **CENTER FOR BIOLOGICAL DIVERSITY,** Plaintiff,
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39 v.
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41 **CHARLTON H. BONHAM, in his official**
42 **capacity as Director of the California**
43 **Department of Fish and Wildlife,** Defendant,
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45 and
46
47 **PACIFIC COAST FEDERATION OF**
48 **FISHERMEN'S ASSOCIATIONS and INSTITUTE**
49 **FOR FISHERIES RESOURCES,**
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51 Intervenor-Defendants.

52 Case No. 3:17-cv-05685-MMC

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54 **STIPULATION AND [PROPOSED]**
55 **ORDER REGARDING SETTLEMENT**
56 **AGREEMENT RE CLAIM FOR**
57 **ATTORNEY FEES**

58 Judge: Hon. Maxine Chesney
59 Trial Date: None scheduled
60 Action Filed: October 3, 2017

1 This stipulated Settlement Agreement to resolve the claim for attorneys' fees and costs in
2 this matter is made between Plaintiff Center for Biological Diversity, Inc. ("Center") and
3 Defendant Charlton H. Bonham, in his official capacity as Director of the California Department
4 of Fish and Wildlife ("CDFW").

RECITALS

6 1. The Center filed a complaint on October 3, 2017, alleging that CDFW had caused and
7 was causing the “illegal ‘take’ of threatened and endangered humpback whales, endangered blue
8 whales, and endangered Pacific leatherback sea turtles.” (Dkt. No. 1.) The Center’s complaint
9 challenged CDFW’s “authorization, permitting, licensing, overseeing, and management of the
10 California commercial Dungeness crab fishery,” which the Center alleged was “killing, injuring,
11 harming, capturing, and otherwise causing ‘take’ of humpback whales, blue whales, and
12 leatherback sea turtles in violation of Section 9 of the Endangered Species Act.” *Id.*; 16 U.S.C. §
13 1538.

14 2. CDFW filed an answer to Plaintiff's complaint on November 17, 2017, admitting and
15 denying certain of the Center's allegations. (Dkt. No. 15.)

16 3. The Parties filed cross-motions for summary judgment in this case and appeared for
17 oral argument on the motions on February 22, 2019. After the matter was deemed submitted, the
18 Parties reached a settlement and, therefore, submitted a Stipulation and Order Staying the Case,
19 which this Court signed on March 26, 2019. (Dkt. No. 72.)

20 4. The Center and CDFW have subsequently engaged in good faith and confidential
21 settlement negotiations concerning the Center's claims for attorneys' fees and costs; and

22 5. The Center and CDFW have reached a settlement of the Center's claims for
23 attorneys' fees and costs which have been claimed or accrued, or could have been claimed or
24 accrued to and including the date upon entry of this Stipulation as an Order by the Court.

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SETTLEMENT AGREEMENT

NOW THEREFORE, in the interests of judicial economy and to avoid the need for a motion for attorneys' fees and costs, the Center and CDFW, hereby stipulate and agree as follows:

1. CDFW agrees to pay the Center's reasonable attorneys' fees and costs, pursuant to Section 11(g) of the Endangered Species Act, 16 U.S.C. § 1540(g)(4), in the amount of \$300,000.00, payable to the Center for Biological Diversity, Inc. No interest will accrue on this payment.

2. The Center agrees to provide CDFW with a completed Payee Data Record (State Standard Form 204) as soon as possible upon the signing of this stipulated Settlement Agreement.

3. CDFW agrees to submit the necessary paperwork to process payment of the attorneys' fees award no later than ten (10) business days after funds become available pursuant to paragraph 4, provided the Center has already submitted the information requested in paragraph 2.

4. CDFW's payment set forth above is contingent upon certification of availability of funds, the approval of the Director of the California Department of Finance, and the enactment by California's Legislature and Governor of a bill including an appropriation for the specific, agreed-upon amount stated in paragraph 1, above. CDFW anticipates that the settlement amount stated above in paragraph 1 will be included in the Budget Act of 2020 (SB 808). CDFW agrees to keep the Center apprised of the bill's progress, and to act in good faith to facilitate its enactment and payment as soon as possible.

5. This Stipulated Settlement Agreement resolves all claims for attorneys' fees and/or costs related to this action to date.

6. The Center agrees to accept payment of \$300,000.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which the Center is entitled in the above-captioned litigation, except as provided in paragraph 8.

7. The Center agrees that receipt of this amount from CDFW shall operate as a release of the Center's claims for attorneys' fees and costs in this matter, except as provided in

1 paragraph 8.

2 8. By and through this Settlement Agreement, CDFW does not waive any right to
3 contest fees claimed by the Center or the Center's counsel, including the hourly rate, in any future
4 litigation. Further, if the administrative stay is lifted to permit litigation of this case to continue,
5 and if this case resolves such that the Center is not entitled to an award of attorney fees or costs
6 (for example, without limitation, if summary judgment is entered against the Center), the Center
7 and CDFW agree that the Center shall promptly return any funds paid to it under this agreement.
8 If the administrative stay is lifted to permit litigation of this case to continue, the Center reserves
9 its rights to seek additional costs and fees associated with the furtherance of the litigation from
10 the date the administrative stay is lifted only. Further, this Settlement Agreement as to attorneys'
11 fees and costs has no precedential value and shall not be used as evidence in any other attorneys'
12 fees litigation.

13 9. The parties agree that this Settlement Agreement was negotiated in good faith. By
14 entering into this Settlement Agreement the parties do not waive any claim or defense.

15 10. The undersigned representatives of each party certify that they are fully authorized
16 by the party or parties they represent to agree to the Court's entry of the terms and conditions of
17 this Agreement and do hereby agree to the terms herein.

18 11. It is understood and agreed that this Agreement or any judgment or act pursuant
19 thereto shall not be construed as, nor constitute, an admission of any liability on the part of
20 CDFW.

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1 12. The terms of this Agreement shall become effective upon entry of this Stipulation
2 as an Order by the Court.

3 Dated: May 19, 2020

Respectfully submitted,

4 */s/ Gary Alexander*

5 Gary Alexander
6 Deputy Attorney General
7 OFFICE OF THE ATTORNEY GENERAL

8 *Attorney for Defendant Charlton H. Bonham*

9 */s/ Catherine Kilduff*

10 Catherine Kilduff
11 Kristen Monsell
12 Dean S. Kristy

13 *Attorneys for Plaintiff*

14 *Center for Biological Diversity*

15 **ATTESTATION**

16 I, Gary Alexander, am the ECF user whose identification and password are being used to
17 file this Joint Status Report. In compliance with L.R. 5-1(i), I attest that the other signatories
18 have concurred in this filing.

19 DATED: May 19, 2020

20 */s/ Gary Alexander*

21 **COURT ORDER**

22 Pursuant to the stipulation of the parties, **IT IS SO ORDERED.**

23 Dated: May 19, 2020.

24 
25 *Hon. Maxine M. Chesney*

26 UNITED STATES DISTRICT JUDGE